

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

RICHARD D. MURRAY, SR.,

Petitioner,

v.

CIVIL ACTION NO. 3:06CV51
(STAMP)

CLERK RORY L. PERRY,
COMMISSIONER JAMES RUBENSTEIN,
and WARDEN MARK WILLIAMSON,

Respondents.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation on Respondent's Motion to Dismiss As Moot Petitioner's Motion for Writ of Habeas Corpus (Doc. 27). After appropriate review in accordance with 28 U.S.C. § 636(b)(1), it is the opinion of the Court that the Magistrate Judge's Report and Recommendation (Doc. 27) should be, and is, **ORDERED ADOPTED**.

On May 26, 2006, Richard D. Murray, Sr. filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Doc. 1). In response, respondents filed their Motion to Dismiss for Failure to Exhaust State Remedies (Doc. 10) on July 11, 2006. In consideration thereof, Magistrate Judge James Seibert issued a Report and Recommendation (Doc. 24) dated February 22, 2007, to which neither party filed objections. The Report and Recommendation (Doc. 24) recommended that Respondents' Motion to

Dismiss (Doc. 10) be denied and the Petition for Writ of Habeas Corpus (Doc. 1) be stayed to allow petitioner to further pursue his state law remedies. However, on March 2, 2007, respondents filed a Motion to Dismiss as Moot the Petition for Writ of Habeas Corpus (Doc. 26). In support of the motion, respondents informed the Court that the requested relief was no longer possible as petitioner had died on February 7, 2007. As a result, Magistrate Judge Seibert issued an additional Report and Recommendation on the Motion to Dismiss (Doc. 27) dated March 6, 2007.

In recognition of the above, the Court concurs with the finding of the Magistrate Judge, that relief is no longer possible and the matter should be dismissed as moot. See Knapp v. Baker, 509 F.2d 922 (5th Cir. 1975). Therefore, the Court **ADOPTS** the Report and Recommendation (Doc. 27) and **GRANTS** Respondents' Motion to Dismiss as Moot (Doc. 26). Accordingly, the Petition for Writ of Habeas (Doc. 1) is **DISMISSED WITH PREJUDICE** and **ORDERED STRICKEN** from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record.

DATED this 12th day of March, 2007.

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE